

In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 130.2075. (This is a GIL).

April 26, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated February 25, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I represent a company that is engaged in the commercial refrigeration business. My client's primary customers are companies engaged in the food industry. These customers include meat processors, commercial bakeries, candy manufacturers, pizza manufacturers and similar businesses. In general, my client's customers do not sell their products to the general public, but rather the customers sell their products to grocery stores, restaurants and institutions who, in turn, sell at retail to the public.

In connection with performing work for its customers, from time to time, it is necessary for my client to purchase refrigeration and related equipment, such as evaporators and compressors. The refrigeration equipment, together with related equipment, is installed at the customer's facilities at which food products are made or processed. Without the refrigeration equipment, the customer would be unable to store raw and finished food products and/or process or manufacture the food products. By way of example, before, during and after processing, a meat processor is required to keep and store meats under refrigerated conditions.

Question No. 1 Is my client subject to the Illinois Use Tax, 35 ILCS 105/1 *et seq.*, as a purchaser of refrigeration and related equipment which is subsequently installed at its customer's food processing facility?

Question No. 2: Is the sale of refrigeration and related equipment which is subsequently installed at its customer's food processing facility subject to the Illinois Retailers' Occupation Tax, 35 ILCS 120/1 *et seq.*?

Question No. 3: Are my client's customers, by virtue of the fact that they are making or processing food products, exempt from taxation on the refrigeration and related equipment that is sold and installed at the customer's facilities?

If you need any additional information, please let me know.

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term "construction contractors" includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term contractor means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

As previously stated, contractors are deemed end users of property that is purchased for incorporation into real property. If general contractors did not purchase the tangible personal property, then the general contractors cannot be held liable for tax due on another entities' purchases. If subcontractors are utilized and are acting as construction contractors, the transaction between the general contractors and the subcontractors is not a taxable transaction. The subcontractors incur Use Tax liability on any tangible personal property that they purchase for incorporation into real estate. If, however, general contractors make purchases and then contract to have subcontractors do the installation, the general contractors incur Use Tax liability because they are making the purchases of such tangible personal property.

There are very limited exemptions for contractors under the Use Tax Act. For instance, in Illinois, organizations that are determined by the Department to be exclusively charitable, religious, educational, or a governmental body, are issued tax exemption identification numbers ("E" numbers). Organizations holding such numbers are exempted from paying sales tax on organizational purchases. The organization must obtain and present this number to a retailer, however, before it can make a tax-free purchase. Suppliers selling tangible personal property to such exempt organizations must retain the "E" number in order to document the exempt sale.

As stated above, contractors are generally considered to be the end users of tangible personal property they permanently incorporate into real estate and owe Use Tax upon their purchases. However, contractors who physically incorporate tangible personal property into real estate owned by holders of "E" numbers can purchase such property tax-free by providing their suppliers with the certification described in Section 130.2075(d), as well as the "E" number of the

group into whose real estate that property will be incorporated. The suppliers should retain this information in order to document the tax-exempt sale.

Sales of tangible personal property to a construction contractor who does not incorporate the items into real estate owned by an exempt organization are subject to tax. Items which are purchased tax-free because of their intended incorporation into real estate owned by an exempt organization, but which are not, in fact, incorporated into real estate owned by an exempt organization, are also subject to tax.

The basic State rate of tax under the Retailers' Occupation Tax Act is 6.25%. In addition to the basic State rate of tax, depending upon the selling location of the retailers, there may be local taxes that apply in addition to the basic State rate of tax. The basic State rate of tax under the Use Tax Act is 6.25%.

Construction contractors incur Retailers' Occupation Tax liability when they engage in selling any kind of tangible personal property to purchasers without permanently affixing the tangible personal property to real estate. See 86 Ill. Adm. Code 130.1940(b)(1). Construction contractors can purchase such tangible personal property tax-free for resale by providing their suppliers with Certificates of Resale. See 86 Ill. Adm. Code 130.1405, enclosed.

Construction contractors who sell tangible personal property must either pay tax or document an exemption. The manufacturing machinery and equipment exemption from sales tax is available for sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See the Department's rules for this exemption set forth at 86 Ill. Adm. Code 130.330, copy enclosed. The process must meet the requirements of manufacturing or assembling set forth in the Department's rules. In addition, the machinery or equipment must be used primarily (over 50% of the time) in a qualifying manufacturing or assembling process. Exemption certificates must be executed by the purchaser and submitted to the retailer. Form ST-587, Machinery and Equipment Exemption Certificate, may be used to document the manufacturing machinery and equipment exemption. A registration number can also be provided to the seller in order to document the exemption.

In the context of sales to contractors who will incorporate qualifying machinery and equipment into real estate as part of a construction contract, purchasing contractors should provide their sellers with certifications that the machinery will be transferred to a manufacturer as manufacturing equipment in the performance of a construction contract for that manufacturer. Purchasing contractors should include the manufacturer's name and registration number to claim the exemption.

The equipment must also meet the requirements of machinery or equipment set forth in the Department's rules. Please note that Section 130.330(d)(4)(H) provides that "[t]he use of machinery or equipment for general ventilation, heating, cooling, climate control or general illumination, not required by the manufacturing process" will generally not be considered to be manufacturing. Machinery and equipment of this type would only qualify if required by the manufacturing process.

As a general rule, under the Manufacturing Machinery and Equipment exemption, pre-production and post-production storage facilities do not qualify for exemption. See 86 Ill. Adm. Code 130.330, enclosed. However, refrigeration or freezer facilities maintained at a specific temperature which is required in order to preserve a post-production manufactured product, can qualify for the Manufacturing Machinery and Equipment exemption. We have extended the regulation in these cases due to the requirements of the industry (the need to prevent contamination of the products).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.